

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CAROLYN S. BUSH,

Plaintiff,

v.

CIVIL ACTION NO. 1:05CV7  
(Judge Keeley)

JO ANNE B. BARNHART,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

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Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 7.02, on January 13, 2005, the Court referred this Social Security action to United States Magistrate John S. Kaull with directions to submit proposed findings of fact and a recommendation for disposition.

On January 17, 2006, Magistrate Kaull filed his Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file any written objections with the Clerk of Court within ten (10) days after being served with a copy of the Report and Recommendation. The parties did not file any objections.

The Magistrate Judge determined that the record did not contain substantial evidence to support the Commissioner's decision

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denying Bush's application for SSI and recommended the matter be remanded pursuant to sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3) for further proceedings before the Commissioner.

Upon consideration of the Magistrate Judge's recommendation and having received no written objections,<sup>1</sup> the Court accepts and approves the Report and Recommendation. Therefore, it is

**ORDERED** That Magistrate Judge Kaul's Report and Recommendation be accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

1. The plaintiff's motion for Summary Judgment (Docket No. 9) is **GRANTED-IN-PART**;
2. The defendant's motion for Summary Judgment (Docket No. 11) is **DENIED**;
3. Pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), this matter is **REMANDED** to the Commissioner for further

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<sup>1</sup> The failure of the parties to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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proceeding consistent with the recommendations contained  
in the Magistrate Judge's Report and Recommendation; and

4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED**  
from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment  
order. Fed.R.Civ.P. 58. If a petition for fees pursuant to the  
Equal Access to Justice Act (EAJA) is contemplated, the plaintiff  
is warned that, as announced in Shalala v. Schaefer, 113 S.Ct. 2625  
(1993), the time for such a petition expires ninety days  
thereafter.

The Clerk of the Court is directed to transmit copies of this  
Order to counsel of record.

DATED: February 6, 2006.

  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE